



CHAIRMAN

Federal Communications Commission

Washington, D.C.  
October 3, 2003

The Honorable John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary  
U.S. House of Representatives  
B-351C Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Conyers:

Thank you for your September 5, 2003 letter concerning the Commission's proceedings regarding digital cable compatibility ("plug and play") and the protection of the digital content delivered by over-the-air television broadcasters ("broadcast flag"). I appreciate learning your views on these important matters and want to assure you that the Commission recognizes and respects the important issues you identify regarding the relationship between copyright law and the transition to digital television ("DTV").

As you know, both the plug and play and broadcast flag proposals submitted to the Commission were the result of extensive industry discussions and negotiations. Although neither proposal resolved all of the relevant issues, both proposals reflected the industries' efforts to reach consensus on many difficult issues related to the DTV transition. In each case, the Commission issued a *Notice of Proposed Rulemaking* to provide interested parties an opportunity to file comments regarding the issues raised in the proposals. A large number of organizations and individuals submitted comments to the Commission and many parties have participated in meetings with commissioners and staff concerning the plug and play and broadcast flag proposals. No one has been excluded from the Commission's proceedings concerning these matters, and the Commission made every effort to hear from all interested parties, especially those who were not direct participants in the earlier inter-industry discussions.

On September 10, 2003, after careful review of the record developed in the plug and play proceeding, the Commission approved a *Second Report and Order and Second Further Notice of Proposed Rulemaking* adopting rules in this important area. The rules adopted by the Commission will permit consumers to connect unidirectional digital television equipment directly to digital cable systems. The *Report and Order* also implements encoding rules that I believe strike an appropriate balance between the interests of consumers and the need to ensure that programming is used as authorized by the content owner. Moreover, the Commission made clear that the encoding rules adopted as part of the plug and play agreement are not intended to affect the existing rights and remedies granted to content owners under current copyright law. Indeed, the Commission modified the encoding rules proposed in the plug and play agreement in


several important ways to address concerns expressed by content owners and discussed in your letter.

The Commission, for example, modified the proposal to limit the use of "selectable output control" technology by multichannel video programming providers to existing services and business models. The Commission also modified the criteria that would be considered when evaluating proposed new services within a defined business model and new business models to delete "consumer expectations" as a factor. This modification addressed assertions by content providers that the use of this criterion would be inconsistent with long-standing copyright law principles. Content owners, as well as other interested parties, also were concerned that they would not have meaningful input into the procedures contemplated in the plug and play agreement to approve new outputs or associated content protection technologies for use with unidirectional digital cable products. The Commission acknowledged this concern by adopting a *Second Further Notice of Proposed Rulemaking* which, among other things, requests additional public comment concerning how and under what conditions new connectors or content protection technologies will be approved.

Finally, the *Report and Order* recognizes the important relationship between the plug and play proceeding and many of the issues and policy matters under review in the pending rulemaking regarding the protection of the digital content delivered by over-the-air television broadcasters. The adoption of the plug and play *Report and Order* will inform the Commission's deliberations regarding the implementation and use of a broadcast flag technology to protect DTV broadcasts from unauthorized redistribution. In this regard, I intend to present a draft order to my colleagues regarding the implementation and use of a broadcast flag technology to protect DTV broadcasts in the very near future.

I look forward to continuing to work with you and other Members of Congress on issues related to the transition to digital television and technology in the communications industry. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Powell", with a large, sweeping flourish extending from the end of the signature.

Michael K. Powell